

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ZACK MORRIS, KRYSTINA MORRIS,)	CIVIL NO. 10-00397 SOM-LEK
ON BEHALF OF JOHN MORRIS,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
STATE OF HAWAII, SECTION)	
ADMINISTRATOR ELLADINE)	
OLEVAO, SOCIAL WORKER DEIRDRE)	
LIND, AND SOCIAL WORKER)	
KELLEY ANDRADE,)	
)	
Defendants.)	
_____)	

**FINDING AND RECOMMENDATION THAT
CASE BE DISMISSED WITHOUT PREJUDICE**

On September 10, 2010, this Court issued a minute order denying the Motion to Stay Action to Allow Plaintiff John Morris to Obtain Counsel that Defendants the State of Hawai'i, Section Administrator Elladine Olevao, Social Worker Deirdre Lind, and Social Worker Kelley Andrade (collectively "Defendants") filed on August 2, 2010 ("Minute Order"). The Minute Order stated that the motion was denied in accordance with the Court's September 8, 2010 inclination. The inclination stated that the Court was inclined to dismiss Plaintiff John Morris' ("John Morris") claims without prejudice if he did not retain counsel because his parents, Plaintiff pro se Zack Morris ("Zach Morris") and Plaintiff pro se Krystina Morris ("Krystina Morris"), were not attorneys and cannot represent him. See Local Rule LR83.2 ("Only

a member of the bar of this court who is also an active member in good standing of a state bar or its equivalent, or any attorney otherwise authorized by these rules to practice before this court, may enter an appearance for a party, sign stipulations or receive payment or enter satisfaction of judgment, decree, or order."); Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) (holding that "a parent or guardian cannot bring an action on behalf of a minor child without retaining a lawyer"). The Minute Order, *inter alia*, directed John Morris to obtain counsel and have counsel file a notice of appearance by October 25, 2010. It also directed Zack Morris and Krystina Morris to physically appear at a status conference on October 25, 2010, unless they retained counsel prior to that date. The Minute Order cautioned that the failure to appear at the October 25, 2010 status conference could result in sanctions, including a recommendation that the case district judge dismiss the case.

John Morris did not retain counsel, and Zack Morris and Krystina Morris failed to appear at the October 25, 2010 status conference. Counsel for Defendants represented to the Court that Zack Morris and Krystina Morris informed him that they will no longer be pursuing the action.

Courts do not take failure to comply with court orders lightly. Federal Rule of Civil Procedure 16(f) provides, in pertinent part:

(1) In General. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(C) fails to obey a scheduling or other pretrial order.

Rule 37(b)(2)(A)(v) provides that the court may "dismiss[] the action or proceeding in whole or in part[.]" Fed. R. Civ. P. 37(b)(2)(A)(v).

John Morris failed to comply with this Court's order to retain counsel by October 25, 2010, nor has he otherwise attempted to appear in this case. Zack Morris and Krystina Morris failed to comply with this Court's order to be physically present at the October 25, 2010 status conference, and they have represented to defense counsel that they no longer wish to pursue this action. This Court therefore RECOMMENDS that this case be DISMISSED WITHOUT PREJUDICE.

The parties are advised that any objection to this Finding and Recommendation is due seventeen calendar days after being served with a copy of this Findings and Recommendation. See Fed. R. Civ. P. 5(b)(2) & 6(d); Local Rule LR74.2. If an objection is filed with the Court, it shall be captioned "Objections to Magistrate Judge's Findings and Recommendation." A copy of the objection shall be served on all parties.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, November 26, 2010.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

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